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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,920	03/30/2001	Samuel Daniel Dull III	ROC920010099US1	7671

7590 10/10/2006

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EXAMINER

FOWLKES, ANDRE R

ART UNIT PAPER NUMBER

2192

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/821,920	DULL ET AL.	
	Examiner	Art Unit	
	Andre R. Fowlkes	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. This action is in response to the appeal brief filed 6/8/06.
2. In view of the appeal brief filed on 6/8/06, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

3. Claims 1-5 and 7-26 are pending.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 and 7-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Nabahi, U.S. Patent No. 6,006,035 (art made of record).

As per claims 1-11 and 26, this is another method version of the claimed method discussed below, in claims 12-15 and 20-22, wherein all claimed limitations have also been addressed and/or cited as set forth below. For example, see Nabahi, col. 3:4-5:45.

As per claim 12, Nabahi discloses **a method of upgrading/installing a computer program on a computer system, the computer program including a script processor**, (col. 4:66-5:15, "a method and system for installing (i.e. upgrading) an application software package onto a computer using a rule-based installation engine (i.e. script processor)... the rule-based installation engine to execute commands according to the ... script language file"), **the method comprising:**

**- creating an upgrade/installation object associated with the computer program, the upgrade object including an instruction set adapted for use by the**

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**script processor to upgrade the computer program** (col. 5:2-3, "installation parameters are translated into a simplified script language file (i.e. upgrade object)" ),

**- and transmitting the upgrade object to the computer system; and**  
**instructing an end user to execute the instruction set with the script processor**  
(Fig 2., step 206, "Application software mfg. releases (i.e. transmits) disk with application software package and rule-based installation engine", and associated text. Additionally, col. 3:4-8, "the system administrator (i.e. end user) ... enters the appropriate information (i.e. executes the instruction set) when prompted (i.e. instructed)").

As per claim 13, the rejection of claim is incorporated and further, Nabahi discloses that **the upgrade object presents the end user with instructions to perform a task** (col. 3:4-8, "the system administrator (i.e. end user) ... enters the appropriate information when prompted (i.e. instructed to perform a task)").

As per claim 14, the rejection of claim is incorporated and further, Nabahi discloses that **the upgrade object prompts the end user to indicate that the task has been performed** (col. 3:4-8, "the system administrator (i.e. end user) ... enters the appropriate information when prompted (i.e. instructed to perform a task)").

As per claim 15, the rejection of claim is incorporated and further, Nabahi discloses that **the instruction set comprises a script and wherein the script**

**processor is adapted to compile and execute the script** (col. 5:27-35, "(the) script language file is compiled into a compiled installation script file using a script compiler... to cause the rule-based installation engine to execute commands in the compile script language file").

As per claim 16, this is another method version of the claimed method discussed above, in claims 12-15 and 20-22, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Nabahi, col. 3:4-5:45.

As per claim 17, this is a product version of the claimed method discussed above, in claims 12-15 and 20-22, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Nabahi, col. 3:4-5:45.

As per claims 18-19, this is another method version of the claimed method discussed above, in claims 12-15 and 20-22, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Nabahi, col. 3:4-5:45.

As per claim 20, the rejection of claim is incorporated and further, Nabahi discloses that **the upgrade object is associated with one or more prerequisites; and further comprising determining if the one or more prerequisites have been met** (col. 5:36-45, "the simplified script language file comprises a predetermined

sequence of installation phase portions (i.e. prerequisites which must be completed and verified prior to executing the next portion)").

As per claim 21, the rejection of claim is incorporated and further, Nabahi discloses **reporting that the instruction set has been executed** (col. 5:36-45, "the simplified script language file comprises a predetermined sequence of installation phase portions (i.e. prerequisites which must be completed and verified prior to executing the next portion)").

As per claim 22, the rejection of claim is incorporated and further, Nabahi discloses that **the installation object comprises a script suitable for transmission by electronic mail** (Fig 2., step 206, "Application software mfg. releases (i.e. transmits) disk with application software package (i.e. script) and rule-based installation engine", and associated text).

As per claims 23-25, this is another method version of the claimed method discussed above, in claims 12-15 and 20-22, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Nabahi, col. 3:4-5:45.

### ***Response to Arguments***

6. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. See Nabahi's method of upgrading/installing a computer

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program on a computer system, the computer program including a script processor, where the instruction set comprises a script and wherein the script processor is adapted to compile and execute the script at col. 4:66-5:15, "a method and system for installing (i.e. upgrading) an application software package onto a computer using a rule-based installation engine (i.e. script processor)... the rule-based installation engine to execute commands according to the ... script language file", and (col. 5:27-35, "(the) script language file is compiled into a compiled installation script file using a script compiler... to cause the rule-based installation engine to execute commands in the compile script language file", as applied in the above art rejection.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre R. Fowlkes whose telephone number is (571) 272-3697. The examiner can normally be reached on Monday - Friday, 8:00am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571)272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARF



**TUAN DAM**  
SUPERVISORY PATENT EXAMINER